UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,412	12/01/2003	Richard C. Elton	Elton-1	1064

7590 02/12/2007

Eric J. Nuss
7980 Drumbeat Place
Jessup, MD 20794

EXAMINER	
WIEHE, NATHANIEL EDWARD	
ART UNIT	PAPER NUMBER
3745	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/724,412	ELTON ET AL.	
	Examiner	Art Unit	
	Nathan Wiehe	3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) *23-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 December 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *20070131* .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Renumbering of Claims

The original listing of claims did not include a claim 12, pursuant to 37 CFR § 126, claims 13-31 have been renumbered 12-30. Thus claims 1-30 are currently pending in the application.

Withdraw of Pervious Restriction

The previous election, mailed 29 November 2006, is improper since Claims 1-16 as well as claims 17-23 are drawn to a cook fan for preventing boil over, classified in class 416, subclass 246. The previous election is hereby vacated and replaced with the following action.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-23, drawn to a cook fan for preventing boil over, classified in class 416, subclass 246.

II. Claims 24-30, drawn to a method of cooking, classified in class 426, subclass 523.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP §

806.05(e)). In this case the method as claimed can be practiced by hand or another and materially different apparatus without the apparatus of Group I.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Eric Nuss on 16 January 2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spring and screw mechanism clamps (Claims 3 and 4) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet,

and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because it is in claim format. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

In paragraph [0016], lines 1-2, "As shown in Fig. 2" should read --As shown in Fig. 1--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15 and 22 recites the limitation "the cord". There is insufficient antecedent basis for this limitation in the claim, since these claims do not depend from claims establishing the cord as a limitation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Jorgensen et al. (4,457,292), hereinafter "Jorgensen". Jorgensen discloses a cook fan (20) attaching to an over shelve (15) holding container (C) through a clamp (70). The fan includes a base (40) and a motor, consisting of springs, shafts and gears, attached to blades (60) through shaft (55). The clamp (70) allows for the base to slide into and out of engagement with the container. The limitation "to prevent boiling over" is being treated as an intended use limitation. A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The cook fan of Jorgensen meets the structural limitations of the claims and is capable of performing the function of preventing boil over.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen". Jorgensen discloses the cook fan (20) is composed of materials suitable for operation through the range of temperatures encountered in an oven (Jorgensen column 3, lines 1-5), but does not explicitly indicate a temperature of greater than 200°. However, it is readily apparent that a temperature of greater than 200° is encompassed within the range of operational temperature for an oven as would be known to one of ordinary skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art that the cook fan of Jorgensen was composed of materials capable of withstanding temperatures greater than 200°.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Jane et al. (5,547,343), hereinafter "Jane". Jorgensen discloses the invention substantially as claimed except for the use of a screw mechanism clamp. Jane discloses a fan (11) including a clamping mount arrangement (51) having a screw mechanism (55) for securely mounting the fan on a support surface. The screw clamp of Jane would provide increased clamping force and thus provide for a more secure mounting of the fan.

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the clamp of Jorgensen by including a screw mechanism as taught by Jane for the purpose of more securely mounting the fan.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Duddy (3,917,940). Jorgensen discloses the invention substantially as claimed except for the use of a magnetic base. Duddy discloses a small appliance (18) mounted to an adjustable arm (16) including a magnetic base member (24,26). The magnetic base allows for use on horizontal, vertical or inclined surfaces that do not provide a hooking or clamping location (Duddy column, 1 lines 34-41). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fan of Jorgensen by including a magnetic base as taught by Duddy to allow for use on vertical, horizontal or inclined surfaces absent of a clamping location.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Thompson (5,370,500). Jorgensen discloses the invention substantially as claimed except for the use of a latch mechanism for vertical adjustment of the fan. However, it is well know in the art of fan supports to provide a height adjustment mechanism. One such common mechanism is the use of two telescoping support elements relatively adjustable through the use of a latch selectively inserted into a plurality of holes. Thompson discloses a fan (11) including a support (14) with a vertical adjustment mechanism comprising a latch (38) and holes (34) as discussed above. Therefore it would have been obvious to one of

ordinary skill in the art at the time the invention was made to modify the fan of Jorgensen by including a support with a latch and hole vertical adjustment mechanism since such an arrangement is commonly used in the art, as evidenced by Thompson, to allow for vertical adjustment of the fan.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Crawford (5,256,039). Jorgensen discloses the invention substantially as claimed except for the use of an electrical power system. Crawford discloses a fan (9) including an electrical power system. The power system of Crawford includes a battery (33) and a cord (31) both being capable of powering the fan (9). Also, the cord (31) may be utilized to recharge the battery (31). The power system of Crawford provides an obvious improvement over the mechanical system of Jorgensen in so much as the electrical system does not require the user to input the energy to operate the fan, thus facilitating use of the fan. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fan of Jorgensen by utilizing an electrical power system as taught by Crawford in order to facilitate the use of the fan.

Claims 3,8,9,11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292) in view of Carter (5,725,356). Jorgensen discloses the invention substantially as claimed except for the use of a goose neck and a spring clamp. Carter discloses a fan (10) including a clamping base (36) that includes a spring for increased clamping force and a goose neck (64) connecting the fan (12) to the base (36). The goose neck allows the position of the fan

to be adjusted. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the fan of Jorgensen by including a spring clamp and a goose neck support as taught by Carter for the purpose of securely mounting the fan by increasing the clamping force and to allow the fan to be positioned in a multitude of locations.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Carter (5,725,356) as applied to claim 16 above, and further in view Duddy (3,917,940). The modified invention of Jorgensen discloses the invention substantially as claimed except for the use of a magnetic base. Duddy discloses a small appliance (18) mounted to an adjustable arm (16) including a magnetic base member (24,26). The magnetic base allows for use on horizontal, vertical or inclined surfaces that do not provide a hooking or clamping location (Duddy column, 1 lines 34-41). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the fan of Jorgensen by including a magnetic base as taught by Duddy to allow for use on vertical, horizontal or inclined surfaces absent of a clamping location.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Carter (5,725,356) as applied to claim 16 above, and further in view of Nigoghosian (5,842,670). The modified invention of Jorgensen discloses the invention substantially as claimed except for the use of a heavy base. Nigoghosian discloses a support member used to hold a hair drying fan apparatus including a base, which provides sufficient weight to counter

balance the weight of the apparatus. Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the fan of Jorgensen by including a base of sufficient weight as taught by Nigoghosian for the purpose of preventing the fan from tipping over.

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jorgensen et al. (4,457,292), hereinafter "Jorgensen" in view of Carter (5,725,356) as applied to claim 16 above, and further in view of Crawford (5,256,039). The modified invention of Jorgensen discloses the invention substantially as claimed except for the use of an electrical power system. Crawford discloses a fan (9) including an electrical power system. The power system of Crawford includes a battery (33) and a cord (31) both being capable of powering the fan (9). Also, the cord (31) may be utilized to recharge the battery (31). The power system of Crawford provides an obvious improvement over the mechanical system of Jorgensen in so much as the electrical system does not require the user to input the energy to operate the fan, thus facilitating use of the fan. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the fan of Jorgensen by utilizing an electrical power system as taught by Crawford in order to facilitate the use of the fan.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent issued to Broberg et al. discloses a fan adapted to blow over a cooking container.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Wiehe whose telephone number is (571)272-8648. The examiner can normally be reached on Mon.-Thur. and alternate Fri., 7am-4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Look can be reached on (571)272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan Wiehe
Examiner
Art Unit 3745

EDWARD K. LOOK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

2/2/07